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COMMENTS ON INTEGRATED REGIONAL WATER MANAGEMENT GRANT PROGRAM GUIDELINES (PROPOSITION 50, CHAPTER 8)

The Natural Heritage Institute is pleased to present these comments and recommendations for revision of the Guidelines in their final promulgation:

1. Water quality includes instream flow improvements:

One stated purpose of this Chapter 8 of Proposition 50 is to improve water quality. It is now clear in California that water quality protection includes measures to assure the physical availability of water in streams where fish and wildlife maintenance or restoration are a designated use under the Federal Clean Water Act and the California Porter Cologne Act. *See U.S. Supreme Court decision in PUD # 1 of Jefferson County v. Department of Ecology*, 511 U.S. 700 (1994), *United States v. SWRCB*, 182 Cal. App. 3d 82 (1986), and the State Board's *D-164, adopting the 1995 Water Quality Control Plan for the San Francisco Bay and Delta*. This includes all current and former anadromous fish streams in California and the Central Valley, where instream flows have been severely altered and the physical available of water for fish and wildlife has been severely compromised. Flow deprivation and alteration is, in effect, treated as a pollutant under the CWA and the Porter Cologne Act. In this context, improving water quality means restoring more natural flow conditions. This same definition applies to AB 1747's preference for "water quality projects that will eliminate or significantly reduce pollution into impaired water waters and sensitive habitat areas". The guidelines should make crystal clear that instream flow restoration is included as a water quality benefit under this Chapter, and that projects to restore more natural flow conditions are eligible for funding.

2. Active recharge of groundwater banks is eligible for funding

Reducing dependence on imported water, within the meaning of Chapter 8, refers to transbasin diversions such as the Trinity River project of the CVP or the delivery of delta water across the Tehachapis. It does not mean groundwater banking (provided that the bank lies in the same drainage basin as the surface source of the imported recharge water). This conclusion is clear from the overall tenor of Proposition 50, which specifically contemplates conjunctive water management, and the implementing statute,

AB 1747, which earmarks \$20 million for the IRWM Grant Program for “competitive grants for groundwater management and recharge”.

3. Matching funds.

The draft guidelines require a 50% “local match” for planning grants and a 10% match for implementation grants. While matching fund requirements are a customary way to stretch bond funds, the current proposal raises several issues:

- First, it is not clear what constitutes a “local match”, or why the qualifier is inserted at all. CWC §79562.5(g) merely provides that “eligible projects include a nonstate contribution”. Section 79564(b) echos that requirement and adds that the contribution can be in the form of in-kind services. Neither Code section, nor anything else in the CWC, specifies that the matching funds must come from local sources. Funds provided by the applicant from any nonstate source are equally efficacious in stretching the bond funds, the putative purpose. Your guidelines do not explain the reason for including the “local” qualifier or its intended effect. Gratuitous insertion of this qualifies engenders needless questions as to whether federal funds or funds from private foundations—both much to be encouraged to advance the purposes of integrated water management in California—would qualify. We recommend that you eliminate the qualifier.
- Second, please specify that all funds raised or used for the project for which bond funds are sought since passage of Proposition 50 in November of 2002 qualify as matching funds. This was the stated by DWR staff at the September 9 briefing, but is not yet explicit in the current draft of the guidelines.
- Third, the logic of requiring a much larger match for planning than for implementation is not obvious. Indeed the logic seems to be inverted. Planning does not create a revenue stream to defray it, implementation does. This suggests that it is more reasonable to require a larger match for implementation than for planning. We recommend that you invert these matching ratios. Again, there is no statutory warrant for this formula.

4. “Net environmental benefit” should be included as a selection and weighting factor.

Section 79560.1(b) of Proposition 50 states quite plainly that environmental impacts and offsetting environmental benefits are to be weighed in awarding grant funds, and that a determination is to be made whether “any environmental enhancement or benefit equals or exceeds any negative environmental impacts of the proposal”. We believe this instruction should be read to require that DWR and the SWRCB include as an explicit selection criterion a demonstration that the proposed project will result in a net environmental restoration benefit, such as restoring more natural instream flow conditions.

5. Clarify that Planning Undertaken by Non-Profit Organizations Can be Eligible for Funding.

The draft guidelines quite properly provide that non-profit organizations are eligible for planning grants, yet the draft guidelines then define the eligible projects so narrowly as to effectively limit them to local public water management agencies. For example, page 6 of the draft guidelines provides that “[t]he Planning Grants are intended to foster development or completion of IRWM Plans and Integrated Coastal Watershed Management Plans, to enhance regional planning efforts, and to assist more applicants to become eligible for Implementation Grant funds”. Similarly, the eligibility criteria set forth in section D of the guidelines would seem to apply only to urban water suppliers, groundwater management agencies and local water management agencies. The enumeration of types of projects that are eligible for planning grants is again limited to the types of plans that local water management agencies alone develop. Appendix B also seems to incorporate this overly narrow approach

The final guidelines should make clear that non-profit organizations may also apply for planning funding for projects that transcend the geographic scope and water management techniques that are the subject of local water management plans. For instances, system-wide technical investigations of the potential for conjunctive water management should be encouraged and supported for the purpose of illuminating for local water managers how additional water supplies can be generated for consumptive as well as instream water needs by reoperating existing reservoirs in conjunction with groundwater banks operated by local groundwater management entities. This work has great value for fostering innovations in local water management in the future, but requires modeling and analysis of physical and economic factors that transcend the purview of individual local water management agencies. Consequently planning for management techniques that can provide these broader benefits—which clearly advance the purposes contemplated by Section 8 of Proposition 50—must be done and is being done by private non-profit organizations such as the Natural Heritage Institute under funding from the state and federal governments. We urge you to make clear that this type of planning work is eligible for funding under Chapter 8 and, indeed, warrants a preference for funding because it is designed specifically to achieve a large net environmental restoration benefit, as contemplated by Section 79560.1(b).

NHI appreciates the opportunity to offer these comments and recommendations. We would be pleased to respond to any questions or provide further details upon request.

Yours sincerely,

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President